

EXHIBIT V

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In Re:

Case No.

RESIDENTIAL CAPITAL, LLC, et. al., 12-12020 (MG)

Debtors.

-----x

VIDEOTAPE DEPOSITION OF JOHN MACK

New York, New York

November 14, 2012

9:53 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27647-A

2

1

2

3

4 November 14, 2012

5 9:53 a.m.

6

7

8 Deposition of JOHN MACK, held at
9 the offices of Kramer, Levin, Naftalis
10 & Frankel, 1177 Avenue of the
11 Americas, New York, New York, pursuant
12 to Notice, before Erica L. Ruggieri,
13 Registered Professional Reporter and
14 Notary Public of the State of New
15 York.

16

17

18

19

20

21

22

23

24

25

1 JOHN MACK

2 steps to protect against the risk that I
3 just identified?

4 MR. PIEDRA: Objection to form.

5 MR. PRINCI: Objection as to
6 form.

7 A. Could you -- I'm not sure I
8 understand your question.

9 Q. Okay. I identified what I
10 believe is a risk, which is, which is that
11 to the extent that AFI controlled the
12 negotiations with Ms. Patrick, their
13 primary objective would be to obtain a
14 settlement, rather than a lower claim.
15 And I'm asking whether the board took any
16 steps to protect against that risk.

17 MR. PRINCI: Objection, assumes
18 a facta not in evidence. Object to
19 the form.

20 But if you understand the
21 question, you may answer.

22 A. Well, I can't speak for AFI. I
23 can only say that at ResCap, I didn't know
24 AFI was having conversations with
25 Ms. Patrick. I had no idea.

1 JOHN MACK

2 Q. What about K&E and Timothy
3 Devine, did you view them as your lawyers
4 or as AFI's lawyers or something else?

5 MR. PRINCI: Objection as to
6 form.

7 A. AFI's lawyers.

8 MR. PRINCI: Excuse me one
9 second. Just pause for one second,
10 Tom.

11 MR. MOLONEY: Wait a second.
12 You can just tell them that he needs
13 to wait -- I'll put it on the record
14 that you need to wait to allow
15 Mr. Princi to state his objection.

16 I think we should note now that
17 counsel is conferring with the
18 witness, and it's not appropriate.

19 Q. What did you understand Timothy
20 Devine's position to be?

21 A. I don't know Timothy Devine.

22 Q. Okay. Do you know whether or
23 not he had a role in negotiating the RMBS
24 deal with Ms. Patrick?

25 A. No.

1 JOHN MACK

2 Q. Did it concern you, if he was
3 the chief of litigation for AFI, and he
4 took the lead in the settlement
5 negotiations and negotiated material terms
6 of the RMBS with Kathy Patrick, without
7 the involvement of Morrison & Foerster?

8 MR. PIEDRA: Objection to form.

9 MR. PRINCI: Objection to form.

10 MR. MOLONEY: Noted.

11 Q. You may answer.

12 A. Generically speaking, yes, I
13 would not understand that.

14 Q. As of May 2012, was there any
15 real connection between the amount that
16 the ResCap board was going to require AFI
17 to contribute to a Chapter 11 resolution
18 and the size of the RMBS claim that was
19 negotiated with Ms. Patrick?

20 A. No.

21 Q. So at least as of May 2012,
22 there was no additional cost to AFI in
23 agreeing to a larger claim from
24 Ms. Patrick's clients, in return for an
25 AFI release, correct?

1 JOHN MACK

2 I'm asking, did you ever get an
3 explanation of what litigation defenses
4 might be available to ResCap to defend
5 against these potential claims?

6 MR. PIEDRA: Object to the form.

7 A. No.

8 Q. For example, were you ever
9 informed that a number of the claims could
10 be eliminated, due to statute of
11 limitations defenses?

12 MR. PRINCI: Just to the extent
13 that you were informed of any such
14 thing by counsel, then I'm going to
15 direct you not to answer.

16 MR. MOLONEY: Okay. I'm just
17 withdrawing my question. We will go
18 on to another area.

19 Q. Now, if we look at the -- before
20 we leave this page, if we look at the
21 number 400, that's -- this estimate
22 includes securities litigation, right?

23 A. Yes, it says so.

24 Q. Okay. Thank you.

25 And now, going on in the same

1 JOHN MACK

2 Q. Okay. Now, did anyone tell you
3 that this was really a low ball estimate,
4 the zero to \$4 billion, that it was
5 really, the real liability, potential
6 liability was substantially higher --

7 MR. PIEDRA: Object to the form.

8 Q. -- as of this point in time?

9 A. No.

10 Q. On the audit committee you
11 wouldn't have approved making this
12 disclosure, if you thought that was the
13 case, right?

14 A. That is correct.

15 Q. So you thought the reason, to
16 use the words, going back to what we
17 looked at before, you thought that the
18 reasonable possible losses for ResCap
19 could not possibly exceed \$4 billion,
20 correct?

21 MR. PIEDRA: Objection to form.

22 MR. PRINCI: Objection as to
23 form.

24 MR. MOLONEY: Let me rephrase.

25 Q. You thought that, based on

1 JOHN MACK

2 reasonable possibilities, the outside
3 level of exposure for ResCap, with respect
4 to these R&W claims, including securities
5 claims, was \$4 billion, right?

6 MR. PRINCI: Objection as to
7 form.

8 MR. PIEDRA: Object to form.

9 A. In an accounting sense, that is
10 correct.

11 Q. In what other sense is it not
12 correct, if any?

13 MR. PIEDRA: Object to the form.

14 MR. PRINCI: Objection as to
15 form.

16 A. Well, there are rules about how
17 you put together an account, a number that
18 you would put in your financial
19 statements. It would conform, this number
20 would conform to those rules.

21 Q. The \$4 billion was not that
22 rule. There's another number in this
23 financial statement that's that rule,
24 right?

25 If you look at page 47 of the

1 JOHN MACK

2 financial statements, and you look at the
3 actual reserves on page 47, which is the
4 column on page 47, that \$824 million
5 reserve is the number that conforms with
6 the rules, right?

7 MR. PRINCI: Excuse me.

8 MR. PIEDRA: Objection to form.

9 MR. PRINCI: Just hold on. I
10 need to look at what he's referring
11 to.

12 A. I don't see it.

13 Q. You see on page 47, you see that
14 table?

15 Maybe it would be helpful, if
16 you look at page 46 at the bottom, you'll
17 see the explanation, it says, "Liability
18 for rep and warranty obligations."

19 The actual accounting reserve
20 being taken was, at this point in time,
21 810,805,000, right?

22 MR. PIEDRA: Objection to form.

23 A. Yes, that's what it says.

24 Q. So the \$4 billion number was not
25 the actual accounting number, that was

1 JOHN MACK

2 some other number, which was really based
3 on the prior -- the beginning of this
4 exhibit was the reasonable possible losses
5 that you could expect, the outside range.
6 The farthest end of the outside range of
7 reasonable possible losses was \$4 billion,
8 right?

9 MR. PRINCI: Objection to form.

10 Do you understand the question?

11 MR. KAUFMAN: I just want to
12 interject.

13 MR. MOLONEY: Please, nobody
14 interject. Let him answer. He's
15 about to answer. Let him answer the
16 question.

17 Go ahead.

18 A. \$4 billion was the upper end of
19 the range.

20 Q. Thank you.

21 MR. KAUFMAN: May I now make my
22 comment?

23 MR. MOLONEY: I wish you
24 wouldn't, but go ahead.

25 MR. KAUFMAN: I think that it is

1 JOHN MACK

2 Q. And this is a meeting to settle
3 the same claims we have just been talking
4 about, right?

5 MR. PRINCI: Objection as to
6 form. It misstates -- excuse me. It
7 assumes facts not in evidence.

8 Q. You may answer.

9 A. It's where the board discussed
10 the R&W settlement, yes.

11 Q. Now, did you attend the meeting?

12 A. Yes, telephonically.

13 Q. Telephonically, okay.

14 And prior to -- did you receive
15 materials?

16 A. Yes.

17 Q. And prior to attending the
18 meeting, were you aware that an agreement
19 had been reached with Ms. Patrick's group
20 along the lines that were disclosed at the
21 meeting?

22 MR. PRINCI: Objection as to
23 form.

24 A. No.

25 Q. You didn't get a heads up from

1 JOHN MACK

2 anyone, saying, look, we reached a deal,
3 this is the terms, before the meeting?

4 MR. PRINCI: Objection as to
5 form.

6 A. That is correct. I did not get
7 an advanced briefing.

8 Q. Okay. So when you saw that the
9 settlement amount was \$8.7 billion, did
10 that number surprise you?

11 MR. PIEDRA: Objection to form.

12 MR. PRINCI: Objection as to
13 form.

14 A. No.

15 Q. Why weren't you surprised by a
16 number that was twice as high as the
17 number in the highest possible range of
18 outcomes you were given only a week
19 before?

20 MR. PIEDRA: Objection to form.

21 MR. PRINCI: Objection to form.

22 Misstates the facts.

23 MR. MOLONEY: Noted.

24 Q. You may answer.

25 A. Well, the numbers aren't apples

1 JOHN MACK

2 \$4 billion was an estimate, but this was a
3 negotiated number, the 8.7?

4 A. Correct.

5 Q. Now, it wasn't determined by a
6 court that ResCap was liable for \$8.7
7 billion, right?

8 A. That is correct.

9 Q. So it was just determined by two
10 human beings who negotiated a number, \$8.7
11 billion, right?

12 MR. PRINCI: Objection as to
13 form.

14 A. It was a negotiated number.

15 Q. Who were the two people who
16 negotiated the number?

17 MR. PRINCI: Objection as to
18 form.

19 A. Our advisors from MoFo, and
20 Kathy Patrick, representing the investors.

21 Q. Now, the person who was
22 representing you, your advisor for MoFo,
23 you would think that they should negotiate
24 a number that's consistent with what they
25 think are their potential liabilities, if

1 JOHN MACK

2 they go to court, right?

3 MR. PIEDRA: Objection to form.

4 MR. PRINCI: Objection as to
5 form.

6 A. No.

7 Q. No? Why?

8 A. They can negotiate a number that
9 is in the best interests of trying to get
10 a transaction accomplished.

11 Q. Even if it doesn't bear any
12 resemblance to what the outcome would be,
13 if the case was actually tried in court?

14 MR. PIEDRA: Objection to form.

15 A. I don't know that it would or
16 wouldn't bear any resemblance to what the
17 actual number would be. I couldn't
18 predict the future like that.

19 Q. Did you get any guidance at the
20 board meeting as to what the number would
21 be, if this claim was actually litigated
22 rather than settled?

23 A. No, not that I recall.

24 Q. So this was just a number needed
25 to do a transaction, is what you are

1 JOHN MACK

2 saying, like an M&A deal?

3 MR. PIEDRA: Objection to form.

4 MR. PRINCI: Objection as to
5 form.

6 A. No.

7 Q. How was it different?

8 A. It was different, because we
9 were, we thought the number was -- well,
10 it was, by evidence, lower than two other
11 settlements, one of which Ms. Patrick had
12 been engaged with. That was the Bank of
13 America. And it was within the range of
14 defects that we his -- we, ResCap,
15 historically had. It was kind of the
16 midpoint of that range. So in a market
17 sense, it seemed to be a reasonable
18 number.

19 Q. Other than those two criteria,
20 were there any other criteria that you
21 relied on, in terms of approving the
22 settlement?

23 MR. PIEDRA: Object to the form.

24 MR. PRINCI: Objection as to
25 form.

69

1 JOHN MACK

2 A. Not that I recall at the time.

3 Q. Okay. Let's see if we can
4 understand whether it's lower than the
5 BofA settlement.

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Q. Okay. And now, when we looked
15 at Exhibit -- the prior exhibit, there was
16 also a further discount of the number for
17 legal defenses.

18 Do you recall seeing that?

19 A. Uh-hum, uh-hum.

20 Q. Was a legal defense discount
21 applied to the number that's on this page?

22 MR. PIEDRA: Object to the form.

23 A. Not that I recall.

24 Q. Okay. So no consideration of
25 legal defenses?

1 JOHN MACK

2 MR. PIEDRA: Objection to form.

3 MR. PRINCI: Objection.

4 A. No, I don't think that was part
5 of what my consideration was.

6 Q. Now, you say it was less than
7 the BofA settlement; is that what you are
8 telling us?

9 A. The defect rate, our defect
10 rate.

11 Q. I know your defect rate. But
12 the settlement amount actually was,
13 ironically, more than the BofA settlement,
14 right?

15 MR. PIEDRA: Objection to the
16 form.

17 Q. BofA settled for \$8.5 billion,
18 we saw in the prior exhibit.

19 MR. PIEDRA: Do you want an
20 answer to the last question?

21 MR. PRINCI: Which question do
22 you want him to answer?

23 Q. The settlement amount proposed
24 to be paid by ResCap is actually more than
25 the amount proposed to be paid by BofA to

108

1 JOHN MACK

2 apples and oranges. Let's see if we can

3 [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

7 A. Okay.

8 Q. So just kind of retrace it.

9 A. To my knowledge, no part of the
10 Ally settlement has been allocated to
11 anybody.

12 Q. You certainly as a board didn't
13 make a judgment that -- that weighing the
14 relative merits of the claims of -- that
15 belonged to ResCap LLC versus other claims
16 that might belong to other entities that

17 [REDACTED]

[REDACTED]

[REDACTED]

20 MR. PRINCI: Objection as to
21 form.

22 Q. You didn't make that judgment,
23 right?

24 A. We did not make that judgment.

25 Q. Now, did you understand that as

109

1 JOHN MACK

2 part of the settlement that was approved,
3 the \$8.7 million settlement, that you were
4 also settling securities claims?

5 A. Yes, it was reps and warranties
6 and securities claims.

7 Q. At any point in time did you
8 ever learn that securities claims were not
9 being picked up by this \$8.7 billion
10 settlement?

11 A. No.

12 Q. So as far as you are concerned,
13 the board has not approved the deal that
14 does not resolve securities claims as part
15 of the \$8.7 billion payment?

16 MR. PRINCI: Objection as to
17 form.

18 A. This is a slightly technical
19 matter. I don't know.

20 Q. Okay.

21 (9019 Exhibit 100, e-mail with
22 attachment, Bates RC 40088324-337,
23 marked for identification, as of this
24 date.)

25 Q. Please look at Exhibit 100 in

131

1 JOHN MACK

2 presented an 8 or \$9 billion claim against
3 Ally that is now totally gone."

4 Do you see that statement?

5 A. Yes.

6 Q. What knowledge, if any, do you
7 have of an 8 to \$9 billion claim that
8 ResCap presented to Ally?

9 A. I would have to speculate that
10 in an early meeting between MoFo and K&E,
11 that that would have been a number that we
12 presented them.

13 Q. Did MoFo -- did you ever present
14 an 8 or \$9 billion ask?

15 A. Did I? No.

16 Q. Why not?

17 MR. PRINCI: Objection as to
18 form.

19 A. These are legal matters. I'm
20 not going to discuss legal matters with
21 principals.

22 Q. Okay. So you weren't settling
23 legal claims?

24 A. No.

25 MR. PRINCI: Objection as to

168

1 JOHN MACK

2 of the companies.

3 Q. Who told you it was an
4 \$8.7 billion obligation of ResCap LLC?

5 A. It was described that way when
6 the document was presented.

7 Q. Apart from it being in the
8 document, were you ever told there was a
9 legal basis for ResCap LLC to have any
10 liability here?

11 MR. PRINCI: Objection as to
12 form.

13 Do you understand the question?

14 THE WITNESS: I'm not sure.
15 Because if it's a legal issue, I
16 don't -- the answer is I wasn't.

17 MR. MOLONEY: I'm finished.
18 Thanks.

19 MR. PRINCI: Thank you.

20 MR. BULL: Before we go off the
21 record, this is Nathan Bull again. I
22 just want to make clear you are
23 precluding me from asking questions
24 without a basis, and we reserve our
25 rights to follow up.